Judicial Ethics Measure Passed by Congress

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Congress gave final approval yesterday to a bill that bars Supreme Court justices and federal judges from sitting in cases involving companies in which they own as little as one share of stock.

The bill, a response to judicial scandals of the past six years, sharply curtails the discretion of justices and judges to handle cases in which there is doubt about their impartiality.

Designed to set a new ethical tone for the federal judiciary, the legislation sets as its standard of judicial propriety the view of the reasonable layman, calling for disqualification in borderline cases where a judge's "impartiality might reasonably be questioned."

In years past, numerous judges and some justices have rejected ethical rules based on mere appearances, contending that a judge had a "duty to sit" even in doubtful cases unless specifically prohibited to do so by law.

Some legal reformers disagreed. They argued that public confidence in the integrity of the judicial system was undermined when a judge held stock interests in litigants but insisted on handling their cases on grounds that the holdings were too small to constitute a "substantial" stake in the outcome.

Under the bill, judges remain free to invest in stocks and especially in mutual funds, but they must maintain awareness of what they own so as to disqualify themselves when necessary.

That provision was a reaction in part to the battle over ethics during the unsuccessful effort to confirm Judge Clement F. Haynsworth Jr. as a Supreme Court justice in 1969. Opponents of Haynsworth criticized him for failing to guard against disqualifying stock holdings when he testified he had no system for doing so.

Another provision was aimed at preventing a repetition of a 1972 case in which Justice William H. Rehnquist cast a deciding vote in a major privacy case after expressing a strong opinion as a Justice Department official that the case should be dismissed.

The bill provides that when a justice or judge has been a government lawyer he should step aside whenever he has "expressed an opinion concerning the merits of the particular case."

Rehnquist, an assistant attorney general from 1969 to 1971, testified before the Senate Constitutional Rights Subcommittee in defense of the Pentagon's right to conduct surveillance of peaceful anti-war demonstrators and other political dissenters without being sued for invading their privacy.

He voted the same way as a justice when the high court sustained the Pentagon argument, 5 to 4. When the American Civil Liberties Union moved to disqualify him, Rehnquist issued an unprecedented memorandum contending that he had not violated existing or evolving ethical canons.

The bill also provides that federal judges and justices may not accept a waiver of disqualification when it is based on an economic interest.

Ethics experts told the Senate and House Judiciary committees that judges frequently coerce lawyers into asking them to preside despite stock holdings or other disqualifying factors. They termed the waiver technique a "velvet blackjack" wielded against lawyers fearful of displeasing the judges.

The Justice Department supported the bill as "a salutary advance in the development of the administration of justice" but the U.S. Judicial Conference headed by Chief Justice Warren E. Burger opposed it.

In a previously undisclosed action, the conference of senior federal judges voted in September to tell Congress the bill was not necessary since the judiciary had put its own house in order with voluntary reforms.

The conference informed the Judiciary committees of its vote but did not say why the bill was unnecessary for Supreme Court justices, who are not covered by the conference's rules. Rowland F. Kirks Jr., administrator of the U.S. court system, said last night that conference members have always assumed Congress knew they spoke only for the lower federal courts.

The bill is patterned after a section of the American Bar Association's code of judicial conduct drafted by a committee that included Supreme Court Justice Potter Stewart and prominent lawyers under the chairmanship of Roger J. Traynor, retired chief justice of the California Supreme Court.

The Senate initially passed the bill a year ago by voice vote. The House approved it on Monday with an amendment extending its coverage to federal magistrates and bankruptcy referees. Yesterday the Senate accepted the House version and sent the bill to th White House.